

Supreme Court, U.S.

FILED

AUG 24 1990

JOSEPH F. SPANIOL, JR.  
CLERK

No. 89-2015

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**In the Supreme Court of the United States**

OCTOBER TERM, 1990

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SISSETON-WAHPETON SIOUX TRIBE,  
ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF FOR THE RESPONDENTS IN OPPOSITION**

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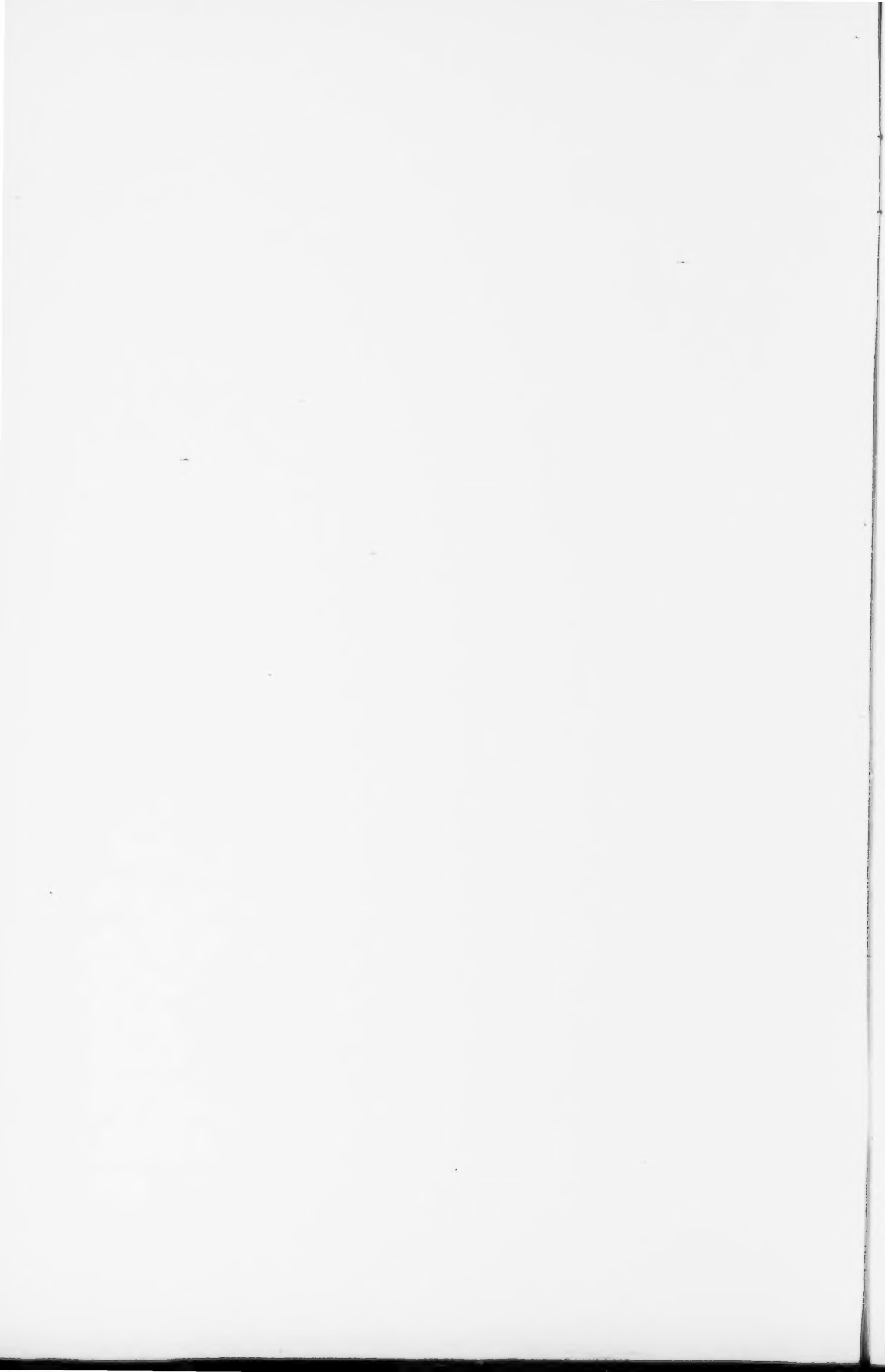
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### **QUESTION PRESENTED**

Whether claims challenging certain provisions of a federal statute enacted in 1972 to provide for the distribution of a judgment of the Indian Claims Commission are barred by the six-year statute of limitations of 28 U.S.C. 2401(a).



## TABLE OF CONTENTS

	Page
Opinions below .....	1
Jurisdiction .....	1
Statement .....	2
Argument .....	6
Conclusion .....	12

## TABLE OF AUTHORITIES

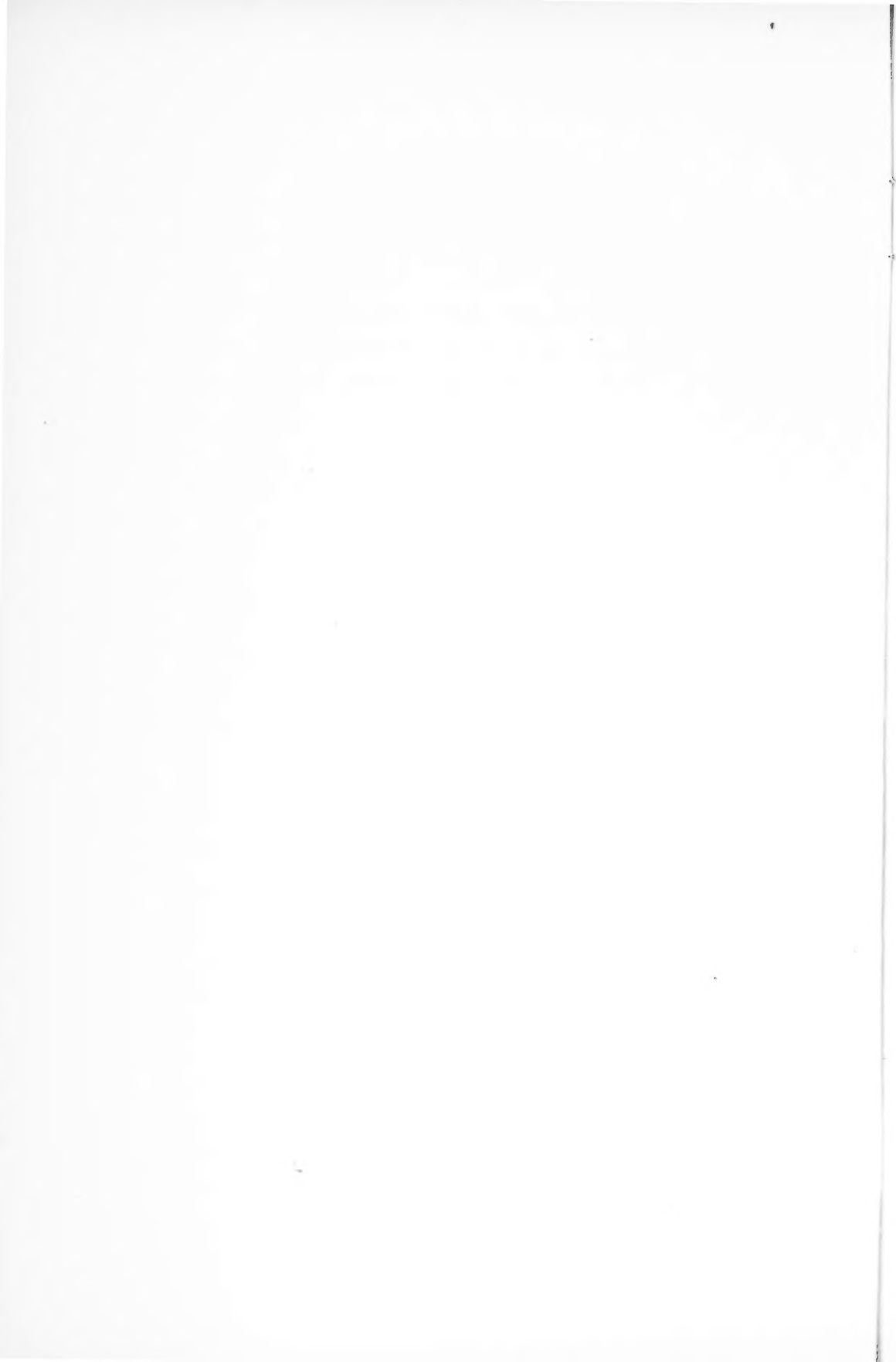
### Cases:

<i>Block v. North Dakota</i> , 461 U.S. 273 (1983) ..	4, 6
<i>Cherokee Freedman v. United States</i> , 195 Ct. Cl. 39 (1971) .....	8
<i>Delaware Tribal Business Committee v.</i> <i>Weeks</i> , 430 U.S. 73 (1977) .....	8, 10, 11
<i>Lewis v. Hawkins</i> , 90 U.S. (23 Wall.) 119 (1874) .....	11
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974) .....	8
<i>Mottaz v. United States</i> , 476 U.S. 834 (1986) ..	6, 7, 11
<i>Sisseton and Wahpeton Bands or Tribes v.</i> <i>United States</i> , 18 Indian Cl. Comm. 526-1 .	2
<i>Turtle Mountain Band of Chippewa Indians v.</i> <i>United States</i> , 490 F.2d 935 (Ct. Cl. 1974) ..	8
<i>United States v. Dann</i> , 470 U.S. 39 (1985) .....	9, 11
<i>United States v. King</i> , 395 U.S. 1 (1969) .....	7
<i>United States v. Mitchell</i> , 445 U.S. 535 (1980) .....	6-7
<i>United States v. Taylor</i> , 104 U.S. 216 (1881) ..	5
<i>United States v. Wurts</i> , 303 U.S. 414 (1938) ..	11

# IV

	Page
Constitution, treaties, statutes, regulation and rules:	
U.S. Const. Amend. V:	
Due Process Clause .....	4, 7
Just Compensation Clause .....	4
Treaty of July 15, 1830, 7 Stat. 328 .....	2, 8
Treaty of July 23, 1851, 10 Stat. 949 .....	2, 8
Act of July 17, 1959, Pub. L. No. 86-97, § 2, 73 Stat. 222 (25 U.S.C. 912) .....	8
Act of Oct. 14, 1966, Pub. L. No. 89-660, § 2, 80 Stat. 911 (25 U.S.C. 1132) .....	8
Act of Sept. 27, 1967, Pub. L. No. 90-93, §§ 4-5, 81 Stat. 229 (25 U.S.C. 1141) .....	7-8
Act of June 19, 1968, Pub. L. No. 90-352, 82 Stat. 239 .....	2, 4
Act of Oct. 25, 1972 (Distribution Act), Pub. L. No. 92-555, 86 Stat. 1168, 25 U.S.C. 1300d <i>et seq.</i> .....	2, 4
25 U.S.C. 1300d-3(b) .....	3
25 U.S.C. 1300d-4(a) .....	2
25 U.S.C. 1300d-4(c) .....	3
Act of Oct. 19, 1973, Pub. L. No. 93-134, 87 Stat. 466 (25 U.S.C. 1401-1407) .....	8
Act of Oct. 8, 1976, Pub. L. No. 94-465, § 2, 90 Stat. 1990 .....	2
Indian Claims Commission Act, ch. 959, 60 Stat. 1049, 25 U.S.C. 70 <i>et seq.</i> (1976) .....	2
25 U.S.C. 70a (1976) .....	2, 9
25 U.S.C. 70(k) .....	9
25 U.S.C. 70u(a) (1976) .....	9
28 U.S.C. 2401(a) .....	4, 5, 6, 7, 9, 11

Miscellaneous:	Page
H.R. Rep. No. 1466, 79th Cong., 1st Sess. (1945) .....	9
S. Rep. No. 144, 92d Cong., 1st Sess. (1971) ..	3
R. Strickland, et al., <i>Cohen's Handbook of Federal Indian Law</i> (1982) .....	8



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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1-16) is reported at 895 F.2d 588. The opinion of the district court (Pet. App. 17-47) is reported at 686 F. Supp. 831.

## **JURISDICTION**

The judgment of the court of appeals was entered on February 2, 1990. A petition for rehearing was denied on March 5, 1990. Pet. App. 49. On May 14, 1990, Justice O'Connor extended the time within which to file a petition for a writ of certiorari to and including June 20, 1990. The petition was filed on June 18, 1990. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).



## STATEMENT

1. Petitioners filed claims against the United States under the Indian Claims Commission Act, ch. 959, 60 Stat. 1049, codified at 25 U.S.C. 70 *et seq.* (1976).<sup>1</sup> Petitioners sought compensation for some 27 million acres of land ceded to the United States by the Treaties of July 23, 1851, 10 Stat. 949, and July 15, 1830, 7 Stat. 328. In 1967, petitioners and the United States agreed to settle the claims for about \$6 million. The settlement agreement was filed with Congress and entered as a final judgment of the Indian Claims Commission in July 1967. See *Sisseton and Wahpeton Bands or Tribes v. United States*, 18 Indian Cl. Comm. 526-1. Congress appropriated funds to satisfy the judgment. Act of June 19, 1968, Pub. L. No. 90-352, 82 Stat. 239. The funds were deposited in an interest-bearing account of the United States Treasury. Pet. App. 2-3.

In 1972, Congress, following its usual practice in tribal claims cases, passed legislation to establish a plan for distributing the judgment fund. Act of Oct. 25, 1972, Pub. L. No. 92-555, 86 Stat. 1168, codified at 25 U.S.C. 1300d *et seq.* (Distribution Act).<sup>2</sup> The Distribution Act allocated the judgment fund roughly as follows: 43% to the Sisseton-Wahpeton Sioux of South Dakota; 22% to the Devil's Lake Sioux, 10% to the Assiniboine and Sioux Tribe, and approximately 25% to "[a]ll other Sisseton and Wahpeton Sioux." 25 U.S.C. 1300d-4(a); Pet. App. 51-52.

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<sup>1</sup> The Indian Claims Commission Act established the Indian Claims Commission as a forum for adjudicating tribal claims against the United States that accrued before August 13, 1946. See 25 U.S.C. 70a (1976). In 1978, Congress dissolved the Indian Claims Commission and transferred unresolved tribal claims to the Court of Claims (succeeded for this purpose by the Claims Court). See Act of Oct. 8, 1976, Pub. L. No. 94-465, § 2, 90 Stat. 1990.

<sup>2</sup> Portions of the Distribution Act are set out at Pet. App. 50-53.

The "other Sisseton and Wahpeton Sioux" are lineal descendants of Sisseton and Wahpeton Sioux who are not themselves members of any of the petitioner Tribes. The Senate Report accompanying the Distribution Act explains that Congress allocated 25% of the judgment fund to non-members of the petitioner Tribes because, "[w]hile it is clear that these successor tribes [*i.e.*, petitioners] exist and are representative of the aggrieved aboriginal bands, historical evidence confirms that there are additional descendants who are not enrolled with these successor tribes, but are entitled to share in the proceeds of the award." S. Rep. No. 144, 92d Cong., 1st Sess. 2-3 (1971). Petitioners participated in developing the distribution plan and endorsed the Distribution Act. See Pet. App. 5; see also S. Rep. No. 144, *supra*, at 2-3 ("All of the concerned Indian groups endorse this method of apportionment and distribution of the judgment funds.").

The Distribution Act directed the Secretary of the Interior to prepare a roll of lineal descendants and to distribute, on a per capita basis, roughly 25% of the judgment fund to the individuals whose names were included on the roll. See 25 U.S.C. 1300d-3(b), 1300d-4(c); Pet. App. 50-53. The Secretary completed preparation of the roll of 1,970 lineal descendants in April 1987 and scheduled payment for May 1987. Pet. App. 4; Pet. C.A. Br. 6.

In April 1987, shortly before the scheduled distribution, petitioners brought this action in the United States District Court for the District of Montana, seeking to prevent payment of any portion of the judgment fund to non-members of the petitioner Tribes. Petitioners alleged that the judgment of the Indian Claims Commission made no provision for payments to individuals other than tribal members, and that the Distribution Act deprived peti-

tioners of their vested right to receive the entire judgment fund.<sup>3</sup>

2. The district court granted petitioners' request for a preliminary injunction enjoining the distribution, but subsequently held that petitioners' claims were barred by the six-year statute of limitations of 28 U.S.C. 2401(a). Pet. App. 17-47. The court observed that Section 2401(a) by its terms applies to "every 'civil action' commenced against the United States." The statute places a condition on Congress's waiver of sovereign immunity, and therefore limits the court's jurisdiction to hear claims against the United States. Pet. App. 31-32 (citing *Block v. North Dakota*, 461 U.S. 273, 287 (1983)). Moreover, the court observed, federal statutes of limitations generally apply to Indian claims. Pet. App. 36-37 & n.2 (citing authorities). Accordingly, the district court held that Section 2401(a) applies to petitioners' claims.

The court also held that petitioners' claims accrued in 1972, when the Distribution Act was passed. Because "[t]he gravamen of [petitioners'] amended complaint is that the Distribution Act \* \* \* improperly deprive[s] [petitioners] of their property" (Pet. App. 39), the court held that the six-year period allowed by Section 2401(a) expired in 1978.<sup>4</sup> Pet. App. 42-43.

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<sup>3</sup> Petitioners contended that distribution of any portion of the judgment fund to non-members would violate the Due Process and Just Compensation Clauses of the Fifth Amendment, as well as the Indian Claims Commission Act and the Act of June 19, 1968 appropriating monies to pay the judgment. Petitioners also alleged that the Distribution Act breached their settlement agreement with the government and violated the trust responsibility of the United States to petitioners. Pet. App. 20.

<sup>4</sup> The district court also held that petitioners' amended complaint failed to state an independent claim against the federal officials named as defendants in petitioners' complaint, and that consequently peti-

3. The court of appeals affirmed. Pet. App. 1-16. The court concluded that each of petitioners' arguments against application of Section 2401(a) "run[s] up against the same obstacle: the 1972 Distribution Act explicitly made the allocations that [petitioners] now allege violated their rights, and the effect and terms of the Act were hardly obscure." Pet. App. 5. Petitioners, moreover, "fail[ed] to explain why they waited fifteen years to challenge the government's clear and explicit decision to award part of the fund to nonmembers." *Ibid.*

The court of appeals rejected petitioners' argument that this action is analogous to a suit to enforce a judgment such as *United States v. Taylor*, 104 U.S. 216 (1881). In *Taylor*, in contrast to this case, the statute of limitations did not bar the claim because the claimant had no reason to believe the government would not pay the claim. Pet. App. 7-8. The court also held that application of Section 2401(a) to petitioners' claims is not contrary to the Indian Claims Commission Act. Although that Act permitted Indian tribes to pursue claims that accrued long before 1946, it did not repeal the statute of limitations on claims accruing *after* 1946. Pet. App. 8-9.

The court of appeals rejected petitioners' arguments that their claims did not accrue until the Secretary completed the roll of lineal descendants in April 1987. Publication of the roll was irrelevant to petitioners' claims, the court held, because those claims are based on Congress's decision in 1972 to allocate 25% of the judgment fund to non-members. Finally, the court held, changes in the law did not justify tolling the statute. Nor did the "scant" precedent for equitable tolling justify tolling where, as here, the challenged action was known to all concerned in

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tioners' claims against those defendants also were time-barred. Pet. App. 46 n.3.

1972 and the dispute pits one group of Indians against another.<sup>5</sup>

### ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any court of appeals. Further review is therefore not warranted.

1. Section 2401(a) of Title 28, the "general statute of limitations governing actions against the United States," *United States v. Mottaz*, 476 U.S. 834, 838 (1986), provides that "every civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues." 476 U.S. at 839. Petitioners do not deny that this is a "civil action" within the meaning of Section 2401(a). Nor do they dispute the basic principle that statutes of limitations on claims against the United States place a condition on the government's waiver of sovereign immunity. Such statutes "must be strictly observed, and exceptions \* \* \* are not to be lightly implied." See *Block v. North Dakota*, 461 U.S. at 287. And this Court has specifically stated that, "even for Indian plaintiffs, [a] waiver of sovereign immunity "cannot be lightly implied but must be unequivocally expressed." ' ' ' *Mottaz*, 476 U.S. at 851 (quoting *United*

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<sup>5</sup> The court of appeals said that it was unclear from the "muddy and unpersuasive record" created by petitioners whether they were claiming that there are no bona fide descendants of the Sisseton and Wahpeton Sioux on the Secretary's roll, or only that the roll includes some unqualified individuals. Pet. App. 10 n.3 The court indicated that the latter allegation would not support a legal claim by petitioners. As to the former possible allegation, the court held that petitioners' complaint was not clear enough to survive a motion to dismiss, but granted petitioners leave to amend their complaint if they are able to state facts supporting such a claim. Pet. App. 11-12.

*States v. Mitchell*, 445 U.S. 535, 538 (1980) (quoting *United States v. King*, 395 U.S. 1, 4 (1969)).

2. Petitioners characterize their action as one to enforce a judgment of the Indian Claims Commission, and contend (Pet. 7-11) that Section 2401(a) does not apply to such actions. In particular, petitioners assert that the Distribution Act altered the judgment of the Commission by "seiz[ing] petitioners' vested and exclusive property right in 25% of the funds" in violation of separation of powers principles (Pet. 7-8), and by "confiscat[ing] 25% of the judgment fund" in violation of the Due Process Clause of the Fifth Amendment. Pet. 10. The short answer to these contentions is that the Distribution Act plainly allocated 25% of the judgment fund to non-members in 1972. Thus, any separation of powers or due process claims that petitioners may have had accrued in 1972 and should have been pursued within the next six years. There is no plausible argument that applying a reasonable statute of limitations such as Section 2401(a) to constitutional claims against the government is itself unconstitutional. On the contrary, this Court has held that constitutional claims are subject to statutes of limitations. See, e.g., *United States v. Mottaz*, 476 U.S. at 843-844.

In any event, petitioners' arguments rest on a false premise: the Distribution Act did not alter the judgment of the Indian Claims Commission. The Commission's judgment, like other judgments under the Indian Claims Commission Act, was not self-executing. Congress, following its standard practice in such cases, appropriated funds to satisfy the judgment and adopted a plan for distribution of the funds.<sup>6</sup> This Court has recognized that Congress

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<sup>6</sup> Prior to October 1973, Congress passed special legislation approving plans to distribute Indian Claims Commission judgments. See, e.g., Act of Sept. 27, 1967, Pub. L. No. 90-93, §§ 4-5, 81 Stat. 229



has broad power to adopt such distribution plans as long as they are "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." *Delaware Tribal Business Comm. v. Weeks*, 430 U.S. 73, 85 (1977) (quoting *Morton v. Mancari*, 417 U.S. 535, 555 (1974)).

In this case, Congress's decision to allocate 25% of the fund to non-member lineal descendants of the Sisseton-Wahpeton Sioux is entirely reasonable in light of its determination that petitioners do not represent all the descendants of the aboriginal bands affected by the Treaties of July 23, 1851 and July 15, 1830. In sum, the Distribution Act was consistent with the judgment of the Indian Claims Commission, and was well within Congress' broad powers to determine "whether specific individuals, classes of persons, or subgroups saying that they are members or components of the prevailing group are entitled to participate in the judgment." *Turtle Mountain Band of Chippewa Indians v. United States*, 490 F.2d 935, 951 (Ct. Cl. 1974) (quoting *Cherokee Freedmen v. United States*, 195 Ct. Cl. 39, 46 (1971)). See generally R. Strickland, et al., *Cohen's Handbook of Federal Indian Law* 572-574 (1982).

3. Petitioners also contend (Pet. 11-15) that application of Section 2401(a) to bar their claims is contrary to the Indian Claims Commission Act. Neither the language nor the purpose of that Act supports this contention. The

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(codified at 25 U.S.C. 1141); Act of Oct. 14, 1966, Pub. L. No. 89-660, § 2, 80 Stat. 911 (codified at 25 U.S.C. 1132); Act of July 17, 1959, Pub. L. No. 86-97, § 2, 73 Stat. 222 (codified at 25 U.S.C. 912). Since October 1973, plans for distributing tribal claims judgments have been developed according to the procedures set out in the Act of Oct. 19, 1973, Pub. L. No. 93-134, 87 Stat. 466 (codified as amended at 25 U.S.C. 1401-1407) (requiring Secretary to develop, for submission to Congress, a distribution plan in consultation with affected tribes).

Indian Claims Commission Act authorized the Indian Claims Commission to hear tribal claims accruing *before* 1946, notwithstanding any statute of limitations that might otherwise have barred such claims. See 25 U.S.C. 70a (1976). But the Act expressly provided that “[n]o claim accruing after August 13, 1946, shall be considered by the Commission,” *ibid.*, and further required that all tribal claims be filed by 1951. See 25 U.S.C. 70k (1976). Consequently, the express provisions of the Indian Claims Commission Act refute petitioners’ contention that tribal claims against the United States accruing after 1946 are not subject to any statute of limitations.<sup>7</sup>

Nor is application of Section 2401(a) to petitioners’ claims inconsistent with the purpose of the Indian Claims Commission Act. The “chief purpose of that Act was to dispose of the Indian claims problem with finality.” *United States v. Dann*, 470 U.S. at 45 (quoting H.R. Rep. No. 1466, 79th Cong., 1st Sess. 10 (1945)). A secondary purpose of the Act was “to transfer from Congress to the Indian Claims Commission the responsibility for determining the merits of native American claims.” 470 U.S. at 45. As the court of appeals observed (Pet. App. 9), even if Congress “intended to open wider the door to federal court especially for Indians to assert claims based on wrongs that occurred when their lands were taken, imposing no time limit on challenges to the distribution plans

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<sup>7</sup> The judgment of the Indian Claims Commission in this case was paid in 1968 when the funds were appropriated by Congress and placed in an interest-bearing Treasury account. See *United States v. Dann*, 470 U.S. 39, 45 (1985). And the Indian Claims Commission Act provided that “payment of any claim \* \* \* shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy.” 25 U.S.C. 70u(a) (1976). Thus, petitioners are barred from arguing that the claims they now seek to litigate are the same as their original claims filed with the Commission.



further none of these purposes." Indeed, acceptance of petitioners' argument that no statute of limitations applies to their claims would undermine the Act's purpose of resolving tribal claims with finality.

4. Petitioners argue, in the alternative (Pet. 15-22), that their claims did not accrue until the Secretary completed the roll of lineal descendants in 1987. This argument fails because, as both courts below found, petitioners' claims turn on Congress's decision to distribute 25% of the judgment fund to a class of non-members rather than on the particular identity of the non-members the Secretary has declared eligible to participate in the distribution. Thus, as the court of appeals observed, the alleged "mistakes and 'new' information the Tribes point to \* \* \* simply are irrelevant to their challenge to the 1972 Distribution Act's award of money to lineal descendants." Pet. App. 10.

This Court's decision in *Delaware Tribal Business Committee v. Weeks*, 430 U.S. 73 (1977), does not support petitioners. As an initial matter, *Weeks* was decided some 13 years ago, and thus any argument that petitioners' cause of action did not accrue until *Weeks* was decided cannot alter the conclusion that petitioners' claims are now time-barred. In any event, contrary to petitioners' contention (Pet. 16), *Weeks* did not hold that "distribution of [Indian Claims Commission] judgment funds to persons who have no affiliation with the judgment creditor tribe" is unconstitutional. In *Weeks*, the Court upheld, against an equal protection challenge, a distribution statute that excluded a group of descendants of the Delaware Indians who had settled in Kansas and were no longer members of an Indian tribe. The Court concluded that the exclusion was justified as "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." 430 U.S. at 85. That Congress may reasonably exclude a class of

persons who are not tribal members from sharing in a judgment of the Indian Claims Commission does not mean that Congress may not reasonably include such persons in a distribution plan. Indeed, the statute upheld in *Weeks* expressly included in the distribution certain other individuals who were not members of any present-day tribe. See 430 U.S. at 82 n.14; see also *id.* at 90 (Blackmun, J., concurring). An inclusive distribution plan is fully justified where, as here, Congress has determined that the successor Tribes do not represent all the descendants of the aggrieved aboriginal bands.<sup>8</sup>

Finally, petitioners err in relying on *United States v. Wurts*, 303 U.S. 414 (1938). Petitioners cite *Wurts* for the proposition that a statute of limitations does not begin to run until an erroneous payment is made. Pet. 20. But *Wurts* construed a 1928 statute that barred suits by the United States to recover amounts erroneously refunded to taxpayers unless such suits were brought within two years "after the making of such refund." 303 U.S. at 415. The Court held, based on the language of the 1928 statute, that the government's right to recover accrued, and the statute of limitations began to run, on the date the refund was paid rather than on the date the refund was "allowed." *Id.* at 418. Section 2401(a) does not refer to the making of a refund, but rather to the time "the right of action first

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<sup>8</sup> Contrary to petitioners' assertions (Pet. 18-19), neither *United States v. Dann*, *supra*, nor *Lewis v. Hawkins*, 90 U.S. (23 Wall.) 119 (1874), stands for the proposition that repudiation of a trust fund does not occur until the government identifies the individuals that it deems eligible to receive the funds. The Distribution Act clearly "repudiated" any claim petitioners might have to the 25% of the judgment fund at issue, and petitioners' right of action, if any, therefore accrued in 1972. Cf. *United States v. Mottaz*, 476 U.S. at 841-844 (claim against United States accrued when claimant "should have known" of the claim).

accrues." Accordingly, as the court of appeals said, "[t]he allocation of funds rather than a demand for payment \* \* \* was the triggering event that commenced the running of the statute of limitations." Pet. App. 8.

### CONCLUSION

The petition for a writ of certiorari should be denied.  
Respectfully submitted.

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AUGUST 1990

